REMARKS

Claim 1-7, 9-11, 13 and 20-23 have been cancelled. New claims 24-28 have been added. Thus, claims 8, 12, 14-19 and 24-28 are pending.

The amendment to claim 12 is supported at least by the specification at page 8, lines 14-13. The amendment to claim 14 is supported at least by the specification at page 8, lines 20-21.

Descriptive support for the new claims 24-28 can be found in the original claim 18 as filed, and the specification at page 14, lines 1-2 and page 15, line 29.

The amendments to claims 17-19 are for editorial purposes only, without any narrowing of the claim scopes.

Claim Rejections -- 35 U.S.C. 102

Applicants respectfully traverse the rejections of claims 8-19 under 35 U.S.C. §102(b) as being anticipated by either WO 2001/014448, with EP 1 227 117 used as the English translation (hereinafter referred to as "EP '117"), or WO 2002/227070, with US 7,132,383 used as the English translation (hereinafter referred to as "the '383 patent"). Claims 9-11 and 13 have been cancelled, rendering the rejections to these claims moot.

In the claimed invention, the catalysts are of such structure and composition that certain peaks appear between -15 to 30 ppm in the ^{27}Al-NMR spectrum and the ratio of the integration of such peaks to the integration of the peaks in measurement of ^{27}Al-NMR spectrum of the aluminum compound alone is 0.3 or higher. The NMR properties are not disclosed in any one of the cited prior art references. Because none of the cited prior art references discloses any polyester polymerization catalysts that **necessarily** have the NMR properties recited in claim 12, the cited prior art references do not anticipate the claimed invention. Anticipatory rejections

based on the principle of inherency cannot be based on probability. The fact that certain characteristic recited in the claims **may** occur in the cited prior art is not sufficient to establish the inherency of the recited characteristic. *See In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). The Examiner has also failed to present any rationale or evidence showing that the recited NMR properties necessarily flow from either of the cited prior art references. These are some of the reasons why the anticipatory rejections should be withdrawn.

The claimed polymerization catalysts are also superior than the polymerization catalysts disclosed in the cited prior art references in that the claimed catalysts can produce polyester having excellent color tone and reduced insoluble particles (see paragraph [0001] and the Examples and Tables 1-4 of the specification). The cited prior art references also do not disclose a polyester polymerization catalyst comprising a solution containing an aluminum compound having the recited NMR properties, wherein the solution is prepared by a solvent exchange method, in particular a solvent exchange conducted at 55 to 105°C, as recited in claims 25-27.

The cited prior art fails to disclose these technical features of the claimed catalysts. At least due to the above-identified deficiencies of the cited prior art, applicants contend that claims 8, 12 and 14-19 were not anticipated by the cited prior art. Withdrawal of the anticipatory rejections is requested.

CONCLUSION

The Examiner is encouraged to contact the undersigned regarding any questions concerning this amendment. In the event that the filing of this paper is deemed not timely, applicants petition for an appropriate extension of time. The Commissioner is authorized to debit Deposit Account No. 11-0600 the petition fee and any other fees that may be required in relation to this paper.

Respectfully submitted,
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Dated: July 6, 2009

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